

and suggested that the article would build the glands and that it would be efficacious in the cure, mitigation, and treatment of serious gland trouble, inflammatory and sciatic conditions, neuritis, lumbago, gout, arthritis and other forms of rheumatism, low vitality, cancer, tumors, appendicitis, diabetes, la grippe, high blood pressure, varicose veins, eczema, syphilis, erysipelas, scarlet fever, smallpox, prostatic obstruction, poliomyelitis, and alcoholic and cigarette poisoning. The article would not build glands, and it would not be efficacious for the purposes represented. Further misbranding, Section 502 (b) (1), the article failed to bear a label containing the name and place of business of the manufacturer, packer, and distributor; and, Section 502 (b) (2), it failed to bear a label containing an accurate statement of the quantity of the contents, since it bore no label containing a statement of the quantity of the contents.

DISPOSITION: A plea of not guilty having been entered, the case came on for trial before a jury on November 21, 1947. The jury returned a verdict of guilty on December 1, 1947; on December 16, 1947, the court imposed a fine of \$250 on each of counts 1 and 2, suspended the imposition of sentence on counts 3 and 4, and placed the defendant on probation for a period of two years, conditioned that she bring the labeling of her products into compliance with the law.

2331. Misbranding of Fernel Intestinal Normalizer, Vitalgen, Fernel Slenda Creme, Fernel Obesine No. 1, Endogene, Slimming T-Ade, Climacteric No. 149, Roxor, Goat's Milk Capsules, Calcium Carduus Compound, Nedra, Linol, Neo-Serum Solution of Organic Marine Substances, Prostate Suppository, and Saw Palmetto & Silica Co. U. S. v. Dr. Jean Paul Fernel. Plea of not guilty. Tried to the jury. Verdict of guilty. Defendant sentenced to 1 year's imprisonment on each of 21 counts, with the sentence on counts 1, 2, and 3 running consecutively, the sentence on the remainder of the counts running concurrently with count 3, and the sentence on count 1 running concurrently with the sentence in a previous case. (F. D. C. No. 12547. Sample Nos. 15028-F to 15034-F, incl., 15037-F to 15039-F, incl., 49061-F, 49062-F, 49068-F, 52045-F, 54825-F, 57840-F, 59563-F, 59571-F, 60323-F, 67410-F, 72020-F.)

INFORMATION FILED: August 21, 1944, Northern District of Illinois, against Dr. Jean Paul Fernel, Chicago, Ill.

ALLEGED SHIPMENT: Between the approximate dates of December 31, 1943, and February 23, 1944, from the State of Illinois into the States of California, Indiana, Massachusetts, Wisconsin, Colorado, Maryland, Michigan, Ohio, and Missouri.

PRODUCT: Analyses disclosed that the *Fernel Intestinal Normalizer* consisted of capsules containing agar, Irish moss, bile extract, and nucleic acid-containing material such as duodenal extract; that the *Vitalgen* consisted essentially of magnesium chloride; that the *Fernel Slenda Creme* consisted essentially of ammonium carbonate, gum, and water, and perfumed and colored with a red dye; that the *Climacteric No. 149* consisted of tablets containing plant material and alkaloids, including strychnine, berberine, aconitine, hydrastine, and milk sugar; that the *Roxor* consisted of capsules containing essentially glandular material, dulse, zinc phosphide, and talc; that the *Goat's Milk Capsules* consisted essentially of milk sugar, fat, protein, a small proportion of a calcium compound, and water; that the *Fernel Obesine No. 1* consisted of capsules containing plant material, including dulse, bladder-wrack, and glandular material; that the *Endogene* consisted of capsules containing glandular material and plant material, including dulse; that the *Slimming T-Ade* consisted essentially of sassafras bark and orange peel; that the *Prostate Suppository* consisted essentially of ichthammol, benzocaine, and plant material, including belladonna and Hyoscyamus incorporated in a fatty acid base; that the *Saw Palmetto & Silica Co.* consisted of tablets containing plant material, milk sugar, and minute quantities of calcium sulfate and calcium fluoride; that the *Calcium Carduus Compound* consisted of tablets containing calcium sulfide, milk sugar, and small amounts of extracts of plant drugs; that the *Nedra* consisted of capsules containing glandular material, plant material, a small proportion of zinc phosphide, and talc; that the *Linol* consisted of linseed oil; and that the *Neo-Serum Solution of Organic Marine Substances* consisted essentially of water containing small proportions of organically combined iodine and sulfur, sodium iodide, and sodium chloride.

NATURE OF CHARGE: Misbranding, Section 502 (a), certain statements on the labels of the articles and in accompanying circulars entitled "Beauty-Health News" were false and misleading, since the articles would not be effective for the purposes claimed. The false and misleading statements regarding the articles were to the following effect:

That the *Fernel Intestinal Normalizer* would be efficacious in normalizing the intestinal secretion and function; that it would aid intestinal digestion; that it would be an adequate and competent treatment for colitis and the similar chronic eczema, and other skin conditions;

That the *Vitalgen* would supply the user with the essential halogen salts; that it would be efficacious in the cure, mitigation, treatment, and prevention of liver and gall-bladder sluggishness by promoting normal bile flow; that it was a systemic food which would aid in generating a normal inner vitalizing force; that it would aid liver elimination and detoxication, and would aid in preventing the formation of gallstones and in their expulsion after they had been formed; that it would aid, nourish, and improve the function of the endocrines and other glandular structures, the nervous system, and the brain; that it would aid in nervous conditions, improve the general nervous tone, bring about a state of calm serenity, and aid in avoiding a nervous breakdown; that it would aid in clearing the complexion, give luster to the eyes, and sheen and life to the hair; and that it would aid in the treatment of acne, psoriasis, chronic eczema, and other skin conditions;

That the *Fernel Slenda Creme* would be efficacious in stimulating fat absorption by its action through the skin; that it would aid in promoting the slimming processes of the body where it was applied; that it would aid in absorption of fat deposits around the chin, at the back of the neck, around the breasts where they seem oversized, the arms, the hips, and the abdomen, and wherever fat deposits had accumulated and a streamlined appearance was desired;

That the *Fernel Obesine No. 1* would be efficacious as an aid in the type of obesity where fat deposits are all over the body, including forearms, wrists, hands, legs, ankles, and back of the neck;

That the *Endogene* would aid in revitalizing and normalizing the endocrine system, including the endocrines of the generative system; that it would aid in preventing a nervous breakdown and other nervous irregularities; and that it would aid in renewing the zest of life;

That the *Slimming T-Ade* would be a slimming aid; that it would remove craving for fattening starches and sweets during a slimming regimen; and that it would be a preventive aid against nutritional obesity;

That the *Climacteric No. 149* would be efficacious in the cure, mitigation, treatment, and prevention of symptoms associated with the climacteric and menopause;

That the *Roxor* would be efficacious as an aid for the relief of symptoms of the male climacteric, including loss of energy, vitality, and zest of life;

That the *Goat's Milk Capsules* would be efficacious in the cure, mitigation, treatment, and prevention of gastric ulcers, colitis, intestinal fermentation, constipation, hyperacidity, and autointoxication; that they would promote better health; that they were the chief source of fluorine; and that fluorine is a youth and beauty aid;

That the *Calcium Carduus Compound* would be efficacious as an aid and relief in varicose veins and ulcerous conditions;

That the *Nedra* would be efficacious as an aid in promoting growth and development of the mammary glands and their surrounding tissue by its tonic influence, and that it would be efficacious in normalizing the feminine glandular system in cases of small undeveloped breast;

That the *Linol* would be efficacious in the prevention of habitual colds and acute catarrhal conditions of the upper respiratory passages, and that it would aid in the treatment of such conditions;

That the *Neo-Serum Solution of Organic Marine Substances* would be efficacious in revitalizing and rejuvenating the body, and that it would be efficacious in overcoming the symptoms of premature aging;

That the *Prostate Suppository* would be efficacious in the cure, mitigation, treatment, and prevention of disease conditions of the prostate;

That the *Saw Palmetto & Silica Co.* would be efficacious in the cure, mitigation, treatment, and prevention of subacute and chronic prostatitis and chronic prostatitis in the aged.

Further misbranding, Section 502 (e) (1), the *Linol* was not designated solely by a name recognized in an official compendium, and its label failed to bear its common or usual name, linseed oil.

DISPOSITION: A plea of not guilty having been entered, the case came on for trial before a jury, at the conclusion of which trial, on December 5, 1944, the jury returned a verdict of guilty. On December 29, 1944, the court denied the defendant's motion for a new trial and sentenced him to one year's imprisonment on each of the 21 counts of the information, with the sentence on counts 1, 2, and 3 to run consecutively, the sentence on the remainder of the counts to run concurrently with that on count 3, and the sentence on count 1 to run concurrently with the 1 year sentence imposed in the case reported in notices of judgment on drugs and devices, No. 1560.

2332. Alleged misbranding of Body Cell Salts. U. S. v. Kirkpatrick Laboratories, Inc., and Dr. George Kirkpatrick. Pleas of not guilty. Tried to the jury. Counts 1 and 3 dismissed. Verdict of guilty against the corporation on count 4. Disagreement on verdict with respect to both defendants on count 2 and with respect to individual on count 4. Motion of defendants for acquittal granted. (F. D. C. No. 15502. Sample No. 60500-F.)

INFORMATION FILED: May 24, 1945, District of Oregon, against Kirkpatrick Laboratories, Inc., Portland, Oreg., and Dr. George Kirkpatrick.

ALLEGED SHIPMENT: On or about April 28, 1944, from the State of Oregon into the State of California.

PRODUCT: Analysis of a sample of the article showed that *Solution A* consisted essentially of water, small proportions of compounds of calcium, iron, and sodium, chloride and sulfate, and traces of compounds of aluminum, magnesium, and silicon. Phosphorus was not present. *Solution B* consisted essentially of water, small proportions of compounds of calcium, sodium, and potassium, iodide and chloride, and traces of silicon and sulfate.

LABEL, IN PART: "8 Fluid Oz. Body Cell Salts * * * (Solution 'A') [or (Solution 'B')] Kirkpatrick Laboratories, Inc., 603 Panama Bldg. Portland Oregon." A circular entitled "Method of Administering Body Cell Salts" accompanied the product.

NATURE OF CHARGE: Misbranding, Section 502 (a), the name on the label and in the circular, "Body Cell Salts," was false and misleading, in that it represented and suggested that the drugs contained mineral ingredients in the proper proportions to build up and maintain the cells of the body, whereas the drugs would not be effective for such purpose. Certain statements on the labels and in the circular represented and suggested that *Solution "A"* contained salts which would aid in preserving physiological alkalinity, in promoting metabolism, in stimulating nutrition, and in maintaining normal body function, and that when used in conjunction with another drug known as *Solution "C,"* it would assist in supplying the deficiency existing when a bronchial condition was present; that *Solution "B"* contained salts which would aid in supplying a deficiency of the elements necessary to restore normal functions of the body; and that *Solution "A"* and *Solution "B"* when used in conjunction with each other, would assist in supplying the deficiency existing when a chronic or subacute condition other than a bronchial condition was present. It was alleged that the drugs would not be effective for the purposes claimed.

Further misbranding, Section 502 (a), the statements on the labels, (*Solution "A"*) "Contains the following ingredients: Aluminum, Carbonate, Chlorine, Calcium * * * Magnesium, Natrium, Phosphate, Sulphur, Silica" and (*Solution "B"*) "Contains the following ingredients: Carbonate, Calcium, Chlorine * * * Natrium, Potassium, Sulphur, Silica," were false and misleading, in that the statements represented and suggested that the articles contained the ingredients listed in therapeutically important amounts, whereas the *Solution "A"* contained no phosphate, and the articles contained therapeutically inconsequential amounts of the other stated ingredients.

The products were alleged also to be misbranded under the provisions of the law applicable to foods, as reported in notices of judgment on foods.

DISPOSITION: Pleas of not guilty having been entered on behalf of the defendants, the case came on for trial before a jury on or about March 24, 1947. During the trial, the court dismissed counts 1 and 3 of the information, ruling that the products were not foods. Motions for a judgment of acquittal were made by